IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4546 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

ASHOKBHAI NANJIBHAI VAGHANI

Appearance:

1. Criminal Misc.Application No. 4546 of 2003

MR KC SHAH, Ld. APP for Petitioner No. 1

MR H.S.MULIA for Respondent No. 1-2

MRS RANJAN B PATEL for Respondent No. 1,2

MR CR ABICHANDANI for Respondent No. 1,2

MR BS PATEL for Respondent No. 1,2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 16/12/2003

ORAL JUDGEMENT

1. Rule. Mr.C.R.Abichandani, learned Counsel for respondent Nos.1 and 2, waives service of notice of rule.

2. The present application for cancellation of bail is preferred by the State against the order dated 29-5-2003 passed by the Court of learned Sessions Judge, Surat in Criminal Misc. Application No.680/2003, whereby both the respondents, who were petitioners in the application before the learned Sessions Judge are released on bail in connection with C.R. No.I-30/2003 for the offences under Sections 302, 504 and 114 of IPC and Section 135 of B.P. Act.

3. The short facts of the case appears to be that the complaint came to be filed vide C.R. No.I-30/2003 for the offences under Sections 302, 504 and 114 of IPC and Section 135 of B.P. Act. against both the respondents as well as one Mukesh Vaghani. Respondents No.1 and 2 herein preferred bail application before the learned Sessions Judge and the learned Sessions Judge, after recording all the submissions of both the sides, while considering the matter for bail, did not at all consider the matter as to whether any prima facie case is there against the present accused in a serious offence under Sections 302 of IPC or not. The learned Sessions Judge only recorded the reasons that since the accused are local residents and since the charge-sheet is filed, it is a case for releasing on bail. Under the circumstances, the present petition.

4. It appears that the learned Sessions Judge has committed not only ex-facie error, but the learned Sessions Judge in the matter for considering the bail application for the serious offences under Section 302 has exercised the judicial discretion without considering the material at all on the question of prima facie involvement of the accused. It is true that whether the presence of the accused will be secured or whether the accused are likely to jump the bail or run away are also relevant considerations, but it is now well-settled in a serious offence where the punishment is of death or life-imprisonment and when the alleged offence is under Section 302 of IPC, the Court while considering the matter for bail is also required to consider as to whether there is any prima facie case of the prosecution against the accused concerned or not. The prima facie involvement of the accused concerned in serious offence is one of the major and important aspect which was required to be considered and there is no discussion on

the said aspect including that there are injured eye-witnesses. I find it proper to leave the matter at that stage, except observing that the order of the learned Sessions Judge is vulnerable on the face of it since no reasons whatsoever are recorded by the learned Sessions Judge for examining the case for consideration of bail keeping in view the prima facie involvement of the accused in the serious offence under Section 302 of IPC or not. Therefore, I find that the order of the learned Sessions Judge deserves to be quashed only on the said ground.

5. Mr.Abichandani has relied upon the judgement of the Apex Court in the case of "Ghanchi Rubina Salimbhai vs. Metubha Diwansingh Solanki", reported in 2003(7) SCC, 183, for contending that even if this Court finds that the order of the learned Sessions Judge deserves to be quashed since no reasons are recorded, this Court may remand the matter back to the learned Sessions Judge for considering the bail application afresh and until the fresh bail application is decided, respondents No.1 and 2 herein be allowed to continue on bail which otherwise also they are enjoying since 29-5-2003.

6. It is true that the order of the learned Sessions Judge deserves to be quashed since no reasons whatsoever are recorded by the learned Sessions Judge on the question of prima facie case so far as accused herein are concerned in connection with the serious offences under Section 302 and, therefore, I find that if a time-bound direction is given to the learned Sessions Judge for deciding the bail application afresh and till then the present status is continued with the additional condition of marking presence by the Opponent Nos.1 and 2 on every alternative day till the learned Sessions Judge decides the matter, the same would take care of the situation for the present until the fresh decision is taken by the learned Sessions Judge after remand.

7. In view of the aforesaid discussion, the order dated 29-5-2003 passed by the learned Sessions Judge in Criminal Misc. Application No.680/2003 is quashed and set aside with the directions to the learned Sessions Judge to decide the bail application afresh in light of the observations made by this Court in this judgement and the learned Sessions Judge shall decide the bail application within a period of fifteen days from the date of receipt of the writ of this Court.

8. Until the learned Sessions Judge decides the bail application afresh, both the accused - respondents No.1

and 2 herein - shall mark their presence on every alternative days at Varacha Road Police Station.

9. It is further directed that the other conditions as imposed by the learned Sessions Judge from condition 1 to 4 shall continue to operate subject to the modification of marking presence, until the matter is decided afresh by the learned Sessions Judge.

10. It is clarified that it will be open to both the sides to raise all the contentions available under the law. The learned Sessions Judge shall decide the matter on merits and in accordance with law.

11. The petition shall stand allowed to the aforesaid extent. Rule made absolute accordingly. Office to issue writ forthwith. Office shall also send the copy of order by fax to the learned Sessions Judge concerned for compliance.

16-12-2003 (Jayant Patel, J.)

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